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January 25, 2010

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 B. Street, S.W.  
Washington, D.C. 20423

ENTERED  
Office of Proceedings  
JAN 25 2010  
Part of  
Public Record

Re: Finance Docket No. 27590 (Sub-No. 3), Application of TTX Company  
for Approval of Pooling of Car Service With Respect to Flatcars

Dear Chief Brown:

Enclosed please find the Response of GATX Corp., CIT Rail and First Union Rail Corporation.

Please feel free to contact me if you have any questions. Thank you for your assistance with this matter.

Very truly yours,

Rachel Lei  
Assistant General Counsel

**SURFACE TRANSPORTATION BOARD**

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TTX COMPANY – APPLICATION FOR	)
APPROVAL OF POOLING OF CAR SERVICE	) FINANCE DOCKET
WITH RESPECT TO FLATCARS	) NO. 27590 (SUB-NO. 3)
	)
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**RESPONSE OF GATX CORP., CIT RAIL AND  
FIRST UNION RAIL CORPORATION**

Rachel Lei  
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Litigation  
GATX Corp.  
222 West Adams  
Chicago, Illinois 60606  
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DATE: January 25, 2010

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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TTX COMPANY – APPLICATION FOR	)	FINANCE DOCKET
APPROVAL OF POOLING OF CAR SERVICE	)	NO. 27590 (SUB-NO. 3)
WITH RESPECT TO FLATCARS	)	
	)	

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**RESPONSE OF GATX CORP., CIT RAIL AND  
FIRST UNION RAIL CORPORATION**

GATX Corp. (“GATX”), CIT Rail (“CIT”) and First Union Rail Corporation (“First Union”) (GATX, CIT and First Union collectively referred to herein as “Commentors”) hereby file this Response to the Reply of TTX Company (“TTX”). Commentors recognize that the Board typically disfavors a “reply to a reply.” However, inasmuch as the relief which Commentors request was initiated by us in our Comments filed on December 31, 2009, and a party seeking affirmative relief at the Board would normally be entitled to close its case, we do not believe that this filing is effectively a prohibited reply to a reply. Our purpose is solely to respond briefly to a few of TTX’s incorrect assertions made in its January 15, 2010 filing.

First, and to be absolutely clear, it is the Board which has concluded (we believe, incorrectly) that the TTX Flatcar Pool provides substantial public benefits. We have made no such assertion. Our point is simply this: in light of the Board’s view that the Pool does provide benefits to the public, those perceived benefits would be substantially enhanced if private car lessors are permitted to participate in the Pool.

Second, contrary to TTX's assertions, now is absolutely the correct time for the Board to evaluate our requested relief. As the Board indicated in its 2004 reauthorization decision, it set up a five-year interim review period precisely to evaluate the impacts of the Pool and to determine if adjustments or further relief were necessary, prior to waiting for the full ten-year term of the Pool to expire. As we have demonstrated, the effect of the Pool has been to disincentivize us from participating extensively in the flatcar market. That reality is not healthy for the railroad industry, of which we are an integral part.

If the Board believed in 2004 that the Pool would disincentivize us from participating in the flatcar market, then the Board was absolutely correct. *See* STB Finance Docket No. 27590 (Sub-No. 3), *TTX Company, et al – Application for Approval of Pooling of Car Service With Respect to Flatcars* (STB served August 31, 2004) at p. 13. The Pool has indeed disincentivized us from participation. Again, we submit that this disincentivization is a bad idea, for us, for the railroads, and for the public.

TTX suggests that the number of flatcar purchases by private lessors since 2004 is evidence that we are heavily investing in flatcars. That could not be further from the truth. Since 2004, while the various commodities transported by flatcar have been among the fastest-growing types of transportation movements, private lessor investment in flatcars has lagged woefully behind due to the disincentives created by the Flatcar Pool. For example, while private car lessors have added only 8,641 flatcars to our collective fleets since 2004, we have added almost 43,000 covered hoppers, 18,000 open-top

hoppers and 43,000 tank cars.<sup>1</sup> For car types in which there are no pools resulting in anti-competitive impacts, we have invested heavily. The Flatcar Pool, on the other hand (and as the Board anticipated), has created disproportionate competitive advantages for TTX, and thereby has muted our investment.

TTX's assertion that private car lessors enjoy certainty of pricing and utilization, whereas TTX does not, is plainly and simply untrue. A substantial portion of our flatcar leases are usage-based. If the cars are not utilized, we do not get paid. Moreover, even flatcars deployed on fixed-rate, fixed-term leases offer substantial risk to lessors; the typical operating lease carries a term that may be 3 years or even less, and each time our flatcars are up for renewal, we face the threat of non-utilization, often due to the availability of TTX equipment. TTX's assertion that "in times of low demand, rail carriers typically continue to use their leased cars" is patently false. All railcar lessors have seen huge numbers of cars returned by railroads and shippers at lease expiration during the current market downturn, and Commentors by themselves have collectively well in excess of 10,000 idle railcars today.<sup>2</sup> TTX, on the other hand, has been able to utilize the monopoly power conferred by the Flatcar Pool to ensure that its flatcars are first in line for transportation movements to the detriment of private lessor cars. TTX and its railroad owners can and do effectuate this result by the simple expedient of denying access on their systems to private cars if TTX cars are available and/or offering transportation rate structures which encourage use of TTX cars in lieu of private cars.

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<sup>1</sup> Source: Umler data. Figures represent net fleet growth.

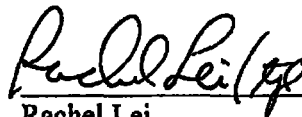
<sup>2</sup> Of the Commentors, only GATX publicly reports rail fleet utilization. GATX currently has approximately 4,500 railcars idle.

Finally, while the exact mechanics of our participation in the Flatcar Pool would certainly have to be worked out amongst the parties, the template for this participation already exists in light of multiple non-TTX owner participation in the automotive reload pool previously authorized by this agency.

In sum, as we indicated in our initial Comments, pursuant to the National Transportation Policy, the economic health of the railroad industry, of which we are an integral part, must be of paramount concern to the Board. In our industry, in which there is a substantial long-term need to replace older, lower-capacity cars with newer, higher-capacity cars, as well as specialty equipment designed to meet the ever-evolving needs of shippers, the current disincentives to private car lessors' investment in flatcars is not beneficial to the health of the rail industry. Consequently, our participation in the Flatcar Pool is both timely and necessary.

Respectfully submitted,

GATX Corp., CIT Rail and First Union Rail  
Corporation

A handwritten signature in cursive script, reading "Rachel Lei" followed by a stylized flourish or initials.

Rachel Lei  
Assistant General Counsel, Litigation  
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222 West Adams  
Chicago, Illinois 60606

Attorney for Commentors

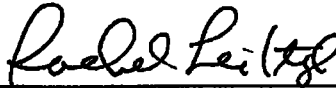
### **CERTIFICATE OF SERVICE**

I hereby certify that on the 25<sup>th</sup> day of January, 2010, I served the foregoing document, Response of GATX Corp., CIT Rail and First Union Rail Corporation, by hand delivery on:

Patrick D. Loftus  
General Counsel and Corporate Secretary  
TTX Company  
101 North Wacker Drive  
Chicago, Illinois 60606

and by First class mail, postage prepaid, on:

Linda J. Morgan  
Michael L. Rosenthal  
Covington & Burling LLP  
1201 Pennsylvania Avenue N.W.  
Washington, D.C. 20004-2401

A handwritten signature in cursive script, appearing to read "Rachel Lei", is written over a horizontal line.

Rachel Lei